

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

CNN AMERICA, INC. AND TEAM VIDEO SERVICES, LLC

And

Case No. 5-CA-31828

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES
& TECHNICIANS, COMMUNICATIONS WORKERS OF
AMERICAN, LOCAL 31, AFL-CIO,

And

CNN AMERICA, INC. AND TEAM VIDEO SERVICES, LLC

And

Case No. 5-CA-33125
(formerly 2-CA-36129)

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES
& TECHNICIANS, COMMUNICATIONS WORKERS OF
AMERICAN, LOCAL 11, AFL-CIO.

**REQUEST FOR PERMISSION TO FILE EXCEPTIONS TO REPORT AND
RECOMMENDATIONS OF THE SPECIAL MASTER AND SUPPORTING BRIEF**

Respondent, CNN America, Inc. ("CNN"), by and through its undersigned attorneys, hereby requests permission to file exceptions to the Report and Recommendations of the Special Master and a supporting brief. In support of this request, CNN states as follows:

1. On May 30, 2008, the National Labor Relations Board ("Board" or "NLRB") granted CNN's request for special permission to appeal Judge Amchan' denial of its petition to revoke the 243-paragraph subpoena issued by the General Counsel and the "similar" subpoena issued by Charging Party Local 31. *See* 352 N.L.R.B. No. 85 (May 30, 2008). The Board concluded that CNN's objections to the two subpoenas on the grounds of undue burden were "plausible," and found that "the extensive analysis required under the Federal Rules and The Sedona Principles would most effectively be accomplished by ordering the appointment of an administrative law judge to serve as a special master to consider the parties' arguments and to aid

them in resolving their disputes.” *Id.* slip op. at 2. The Board further concluded that if the parties were unable to resolve disputes concerning the subpoenas, the special master was to make a report to the Board concerning the enforceability of the subpoenas, based upon the Federal Rules of Civil Procedure and The Sedona Principles. *Id.* Administrative Law Judge Paul Buxbaum was appointed the special master, and on December 1, 2008 he issued his Report and Recommendations. The matter was transferred to and continued before the Board. *See* NLRB Rules and Regulations §§ 102.26, 102.31.

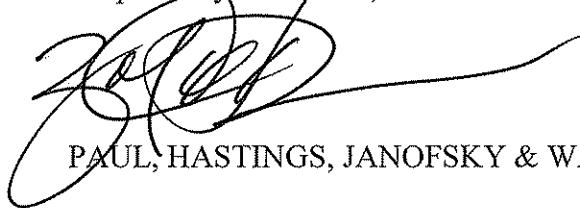
2. The Special Master’s Report and Recommendations finds that the parties to the proceeding failed to resolve their disputes concerning this matter, Report and Recommendations at 3, lines 15-18, yet it nonetheless fails to address the overall enforceability of the subpoenas, as ordered by the Board. Instead, the Special Master concludes that the General Counsel and Local 31 have withdrawn their subpoenas except for 4 paragraphs under which they seek only privileged documents, and further concludes that CNN did not meet its burden to demonstrate that the production of the privileged documents sought by the General Counsel “would be unduly burdensome ... or would cause a serious disruption of CNN’s normal business operations.” Report and Recommendations, at 16, lines 46-50. It recommends that the Board order CNN to produce the documents contained on its privilege and redaction logs responsive to Paragraphs 26, 26, 40, and 43 of the General Counsel’s subpoena to Judge Amchan for in camera inspection, *id.* at 16-17, even though the Board already has entered an Order requiring such production and the General Counsel has already brought a proceeding in District Court to enforce the Board’s prior Order. *See* 352 N.L.R.B. No. 64 (May 9, 2008) (requiring CNN to turn over privileged documents for review); *NLRB v. CNN*, Civil Action No. M-36 (S.D.N.Y.). With all due respect, CNN believes that the Special Master has misconstrued his mandate and that his

Recommendations urge the Board to engage in a duplication of its prior ruling, indeed going so far as to recommend that the Board simply reaffirm its prior Order. *See* Report and Recommendations at 17, lines 3-6.

3. The Board's Rules and Regulations do not contain any provision governing the right to file exceptions, objections, or any other response to the report and recommendations of a special master. CNN requests that in the absence of any such authority, Judge Buxbaum's Report and Recommendation be treated as a final decision and recommended order of an administrative law judge to which exceptions may be filed pursuant to § 102.46 of the Board's Rules and Regulations. Indeed, Judge Buxbaum's Report and Recommendations closely resembles an administrative judge's final decision and recommended order. It adjudicates several questions regarding the validity of the General Counsel's subpoena and suggests that the Board enter a particular order in light of the recommended resolution to those questions. Before the Board considers implementing Judge Buxbaum's recommendations, like any party who would be adversely affected by a recommended order, CNN requests permission to file exceptions and a supporting brief.

4. In light of the upcoming holidays, CNN seeks leave to file its exceptions and a brief not in excess of 50 pages on or before January 9, 2009.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Paul Hastings", with a long horizontal flourish extending to the right.

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**COUNSEL FOR RESPONDENT
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LOCAL 11, AFL-CIO

AFFIDAVIT OF SERVICE

Karen C. Davis being duly sworn, deposes and says as follows:

1. I am over 18 years of age, am not a party to this proceeding, and am employed by the law firm of Paul, Hastings, Janofsky & Walker LLP, 875 15th Street, N.W., Washington, D.C. 20005.

2. On the 3rd day of December, 2008, I filed, by hand delivery, an original and eight copies of CNN America, Inc.'s Request For Permission To File Exceptions To Report And Recommendations Of The Special Master And Supporting Brief, as well as an E-File, with Lester Heltzer, Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570.

3. On the 3rd day of December, 2008, I served one true and correct copy of CNN America, Inc.'s Request For Permission To File Exceptions To Report And Recommendations Of The Special Master And Supporting Brief, by overnight mail, on the following:

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Karen C. Davis

Sworn to before me this
3rd day of December, 2008



Notary Public

Carole L. Stephens
Notary Public, District of Columbia
My Commission Expires 2-14-2010